

Law Office of Jack Silver

708 Gravenstein Hwy. North, # 407 Sebastopol, CA 95472-2808
Phone 707-528-8175 Email: JSilverEnvironmental@gmail.com

***Via Certified Mail –
Return Receipt Requested***

January 12, 2017

Chris Theisen, General Manager
Head of Agency
Members of the Board of Directors
Ventura Regional Sanitation District
1001 Partridge Drive, Suite 150
Ventura, CA 93003-0704

Malibu Bay Owners Association
Head of Agency
Brian Davidoff, Registered Agent
15315 Magnolia Blvd., #212
Sherman Oaks, CA 91403

Malibu Bay Club
Head of Agency
Brian Davidoff, Registered Agent
15315 Magnolia Blvd., #212
Sherman Oaks, CA 91403

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution
Control Act (Clean Water Act)**

Dear Mr. Theisen, Mr. Davidoff, Heads of Agency, and Members of the Board of Directors,

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"; 33 U.S.C. § 1251 *et seq.*) that River Watch alleges are occurring through the ownership and/or operation of the Malibu Bay Club Wastewater Treatment Plant's modified septic collection system onsite wastewater treatment system, and related effluent disposal facilities (hereafter the "Facility").

River Watch hereby places Ventura Regional Sanitation District, Malibu Bay Owners Association and Malibu Bay Club (hereafter "Dischargers"), as owners and/or operators of the Facility and/or the modified septic systems, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Dischargers for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) as the result of alleged unlawful discharges of pollutants from the Dischargers' Facility to a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the Dischargers violate the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the Dischargers' operations in the region at issue in this Notice is the Regional Water Quality Control Board, Los Angeles Region ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the Discharger with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specified standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of pollutants from the Facility and the modified septic system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful." Dischargers have no NPDES permit allowing them to lawfully discharge pollutants to jurisdictional waters.

2. *The Activity Alleged to Constitute a Violation.*

River Watch contends that from January 12, 2012 through January 12, 2017, the Dischargers have violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

The Dischargers own and operate the Facility, which provides wastewater treatment to the Malibu Bay Club, a 136-unit condominium complex located adjacent to the beach and Pacific Ocean, a half a mile west of the Los Angeles/Ventura County line.

In September, 2003, the Dischargers entered an agreement to design, build, own, maintain, and operate an advanced onsite wastewater treatment facility, including any related effluent disposal on the condominium property, to treat all generated wastewater effluent. The Facility utilized the Malibu Bay Owners Association and/or Malibu Bay Club's existing septic tank/leach field buried underneath the beach, installing new filtration and treatment equipment beneath the condominium property parking lot. The Dischargers completed construction of the Facility in October, 2005. An average of 15,000 gallons per day of tertiary treated domestic wastewater is discharged from the Facility. The Facility provides primary, secondary and tertiary treatment through a collection system, a primary settling/septage handling system, a 9,000-gallons equalization tank, a trickling filter, a clean stream treatment, a disinfection system, and leach field disposal system.

Based upon sampling results, pollutants discharged from the Facility following treatment include: nitrite, nitrate, phosphorus, ammonia, disinfection by-products, chlorine and bacteria. These pollutants are discharged to groundwater which flows through the leachfield disposal system toward the Pacific Ocean Nearshore Zone and the Pacific Ocean.

Depth to groundwater at the Facility ranges 5 feet to 10 feet below ground surface (bgs). The leachfield disposal system is comprised of three (3) leachfields: the primary leachfield, an alternate leachfield, and the backup leachfield. The entire leachfield disposal system consists of five (5) cells measuring 75 feet long x 10 feet wide x 5 feet deep. The wastewater from the leachfield disposal system, hydrologically connected, discharges approximately thirty (30) feet from the Pacific Ocean – a water of the United States.

The alleged illegal discharges occur from several point sources, including residential septic systems, the collection system, and the Facility leachline and leachfield disposal system. Each point source is adjacent to the Pacific Ocean. Sewage system overflows discharge to storm drains that lead to the Pacific Ocean.

The Facility and leachfields are located in the Little Sycamore Canyon Creek Hydraulic Unit, in close proximity to the Pacific Ocean Nearshore Zone where groundwater flows towards the Pacific Ocean.

The RWQCB's Water Control Plan or "Basin Plan" identifies the following "beneficial uses" at this part of the Nearshore Coastal ecosystem: industrial service supply, navigation, water contact and non-water contact recreation, commercial and sport fishing, marine habitat, wildlife habitat, biological habitat preserve, rare and endangered species habitat support, migration of aquatic organisms, spawning and reproduction of aquatic organisms and shell fish harvesting. The discharges reaching these waters cause prohibited pollution by unreasonably affecting beneficial uses. River Watch is understandably concerned regarding the effects of both surface and underground discharges in and around the diverse and sensitive ecosystem of the Pacific Ocean.

3. *The Person or Persons Responsible for the Alleged Violation.*

The entity responsible for the alleged violations identified in this Notice are the Ventura Regional Sanitation District, Malibu Bay Owners Association and Malibu Bay Club, identified herein as "Dischargers" and those of their employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. *The Location of the Alleged Violation.*

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the Dischargers which relate to their sewer collection system as further described in this Notice. The Dischargers own and operate the Facility located at 41000 Pacific Coast Highway in Ventura County.

5. *A Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is January 12, 2012 through January 12, 2017. River Watch may from time to time update this Notice to include all violations of the CWA by the Discharger which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. River Watch is located in Sebastopol, California with a mailing address of 290 S. Main Street, #817, Sebastopol, California. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed as follows:

Jack Silver, Esq.
Law Office of Jack Silver
708 Gravenstein Hwy. North # 407
Sebastopol, CA 95472-2808
Tel. 707-528-8175
Email: JSilverEnvironmental@gmail.com

David J. Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the Dischargers and their staff to tailor remedial measures to the specific operation of the Facility. In advance of that conversation and to help economize the time and effort the parties need to resolve their concerns, River Watch identifies the fact that the Dischargers currently treat their sewage to tertiary levels which should make the treated effluent eligible for direct discharge to the Pacific Ocean provided the Dischargers apply for and are granted a NPDES permit. Having a NPDES permit will provide the necessary safeguards and regulatory oversight necessary to protect beneficial uses.

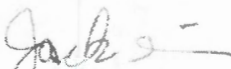
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, horseback riding, hiking, photography, nature walks and the like. Their health, use and/or enjoyment of this natural resource is specifically impaired by the Dischargers' alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500.00 per day/per violation for all violations pursuant to CWA §§ 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Dischargers to contact River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

Service List

Administrator

U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Regional Administrator

U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Executive Officer

Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013